



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/163078

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 07, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a telephonic hearing was held on February 03, 2015.

The issue for determination is whether petitioner was overpaid because she received child care benefits when the father of her child was in the home and not in any approved W-2 activity, due to agency error.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Coordinator  
Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner received child care benefits from at least September to October 2014.
3. On September 17, 2014 petitioner reported that the father of her child was living in her home. He was not in any approved W-2 activity.

4. On December 11, 2014 the agency issued a notice to petitioner stating that she had been overpaid child care benefits in the amount of \$497.74 for September to October 2014 because the father of her child was living in her home and not in any approved W-2 activity. This was due to non-client error. Exhibit 3.

### **DISCUSSION**

County, tribal and W-2 agencies are responsible for preventing and correcting improper child care payments, establishing and collecting overpayments, and determining which clients and providers shall be referred for overpayment to the fraud investigation provider, and/or to the District Attorney's office for criminal prosecution. These responsibilities encompass eligibility, authorizations, attendance reporting, and all other activities related to the expenditure of Wisconsin Shares benefits.

Wisconsin Statute §49.195(3), requires county agencies to try to recover all overpayments made under Wis. Stat. §49.155, the statute authorizing subsidized child care, regardless of who was at fault. See Wis. Stat. §49.195(3). This means that even if the agency caused the overpayment, the petitioner will still be "on the hook" for it because s/he received more benefits than s/he was eligible to receive. Therefore, the agency must determine whether an overpayment has been made and, if so, the amount of the overpayment and take all reasonable steps necessary to recover it. Wis. Stat. §49.195(3); Wis. Admin. Code §DCF 101.23(2); See also, *Child Care Policy Manual*, Ch. 2., available online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

In this case, the county established the overpayment at issue because the father of petitioner's child was living in her home and not in any approved activity. A parent is only eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a); W-2 Manual, Ch. 14. If both parents are in the household, both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1); see also *Child Care Policy Manual*, §§1.4.8, 1.4.8.2.

Petitioner did not dispute the facts. However, she did argue that the imposition of the overpayment was unfair when it was caused by the agency. As stated above, the law requires the recovery of the overpayment even if it was caused by agency error. Further, administrative law judges do not have the power to address issues of fairness. We are required to apply the law as written. I have reviewed the calculations and find no errors. Accordingly, I must uphold the county's overpayment determination.

### **CONCLUSIONS OF LAW**

Petitioner was overpaid child care benefits because she received child care benefits when the father of their child in common was living with her and was not working nor in any approved W-2 activity.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and the same is hereby DISMISSED.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

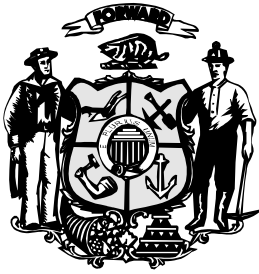
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of April, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 21, 2015.

Kenosha County Human Service Department  
Public Assistance Collection Unit  
Child Care Fraud